

OTHER AGENCIES

NEW JERSEY MEADOWLANDS COMMISSION

Debarment, Suspension and Disqualification from Contracting

Proposed New Rule: N.J.A.C. 19:3-7

Authorized By: New Jersey Meadowlands Commission, Robert R.

Ceberio, Secretary

Authority: N.J.S.A. 13:17-6(o) and 52:34-18 and -19; and Executive Order

No. 34 (1976) and No. 189 (1988).

Calendar Reference: See Summary below for explanation of exception
to calendar requirement.

Proposal Number: PRN 2007-282

A public hearing on this matter will be held on Tuesday, October 2, 2007

at 10:00 A.M. at the following location:

New Jersey Meadowlands Commission
Two DeKorte Park Plaza
Lyndhurst, NJ 07071

Submit written comments by November 3, 2007 to:

Ileana Kafrouni, P.P., AICP
Director of Land Use Management
Chief of Regulatory Affairs
New Jersey Meadowlands Commission
One DeKorte Park Plaza
Lyndhurst, NJ 07071

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 13:17-6(o) and 52:34-18 and -19; and Executive Order No. 34 (1976) and No. 189 (1988), the New Jersey Meadowlands Commission (NJMC) proposes to adopt new rules at N.J.A.C. 19:3-7.

The NJMC staff was authorized by the NJMC Board of Commissioners on July 25, 2007, to proceed with this proposed rulemaking in order to ensure that the NJMC has a mechanism in place to ensure that its contracting processes are carried out in accordance with the most stringent ethical standards legally available.

A summary of the proposed rules follows:

N.J.A.C. 19:3-7.1, Definitions, sets forth definitions for the words “affiliates,” “Commission,” “debarment,” “contracting,” “disqualification,” “person,” “State,” and “suspension.”

The term “affiliates” means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

The term “Commission” means New Jersey Meadowlands Commission.

The term “debarment” is defined as an exclusion from contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or

inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.

The term “contracting” means any arrangement giving rise to an obligation to supply any thing or perform any service, other than by virtue of State employment, or to supply any thing to or perform any service for a private person where the Commission provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

The term “disqualification” is defined as a debarment or a suspension that denies or revokes a qualification to bid or otherwise engage in Commission contracting that has been granted or applied for pursuant to statute, or rules and regulations.

The term “person” means any natural person, company, firm association, corporation, or other entity.

The term “State” is defined as the State of New Jersey, or any of the departments or agencies in the executive branch of government with the lawful authority to engage in contracting.

The term “suspension” means an exclusion from contracting for a temporary period of time, pending the completion of an investigation of legal proceedings.

This section is consistent with Executive Order No. 189 (1988) that directed State agencies to promulgate rules and procedures to prohibit certain activities by vendors providing goods and services to or performing any contract for State agencies.

N.J.A.C. 19:3-7.2, Causes for debarment, sets forth the various causes for which a person shall be debarred from contracting with the Commission.

N.J.A.C. 19:3-7.3, Conditions for debarment, sets forth the conditions for debarment of a person from contracting with the Commission.

N.J.A.C. 19:3-7.4, Procedures, period and scope of debarment, describes the procedures that the Commission must undertake when seeking to debar a person, as well as the period for such debarment and the scope of the same.

N.J.A.C. 19:3-7.5, Suspension and causes therefore, states that the Commission may suspend a person for the same causes as set forth in N.J.A.C. 19:3-7.2 described above.

N.J.A.C. 19:3-7.6, Conditions for suspension, sets forth the conditions for suspension of a person from contracting with the Commission.

N.J.A.C. 19:3-7.7, Procedures, period and scope of suspension, describes the procedures that the Commission must undertake when

seeking to suspend a person, as well as the period for such suspension and the scope of the same.

N.J.A.C. 19:3-7.8, Applicability, describes the applicability of the rules in Subchapter 7.

N.J.A.C. 19:3-7.9, Exclusions, allows for the granting of an exception from the debarment, suspension or disqualification of a person where it is essential to the public interest.

N.J.A.C. 19:3-7.10, Notice, requires notice to the Attorney General and the State Treasurer of any proposed debarment or suspension.

N.J.A.C. 19:3-7.11, Lists, requires that the Commission provide the State Treasurer with a list of all persons suspended or debarred and the effective date and term thereof.

N.J.A.C. 19:3-7.12, Discretion, sets forth that the subchapter shall not be construed as limiting the authority of the Commission to refrain from contracting.

Proposed N.J.A.C. 19:3-7.2 through 7.12 are consistent with both Executive Order No. 34 (1976) and Executive Order No. 189 (1988).

As the NJMC has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The adoption of N.J.A.C. 19:3-7 will result in a positive social impact. The proposed new rules will help to ensure that all persons contracting with the NJMC meet a standard of responsibility for fair competition and honest performance in their dealings with the NJMC.

Economic Impact

N.J.A.C. 19:3-7 may have a negative economic impact on persons who are debarred, suspended or disqualified from contracting with the NJMC. The rules will not, however, have an effect upon the total number of contracts entered into by the NJMC. The subchapter will have a positive economic impact on the NJMC and the public, in that it will help to ensure that the NJMC deals only with those contractors who maintain standards of performance and integrity.

Environmental Impact

N.J.A.C. 19:3-7 will have no direct environmental impact, but may have a positive indirect impact by assisting the NJMC in maintaining minimum, standards of competition and performance for its contractors. As a result, the NJMC will be able to focus its resources on those contractors that have a history of achieving an acceptable level of performance.

Federal Standards Statement

N.J.S.A. 52:14B-4 requires State agencies that adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The rules proposed for adoption have not been formulated in accordance with the authority of or in order to implement, comply with or participate in any program established under Federal law.

Jobs Impact

The NJMC does not anticipate that the rules proposed for adoption will have any impact on job creation or retention in the State, except that N.J.A.C. 19:3-7 may have a negative impact on those businesses that are debarred, suspended, or disqualified from contracting with the NJMC. However, the rules have no effect on the number of contracts that the NJMC enters into; therefore, the number of jobs that may result from those contracts will remain constant.

Agriculture Industry Impact

The NJMC does not anticipate that the rules proposed for adoption will have any impact upon agriculture in New Jersey. The Hackensack Meadowlands District is an area comprised of commercial, industrial, and residential areas.

Regulatory Flexibility Analysis

Under N.J.A.C. 19:3-7, persons, including small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., can be suspended, debarred, or disqualified from contracting with the NJMC for failure to comply with certain State and Federal laws, contract specifications or other requirements. The only compliance requirements imposed on persons subject to the rules are the timeframe and process for requesting a hearing after receipt of a notice of proposed debarment. There are no costs involved beyond submission of the written request, and no professional services are required in order to comply with these rules. This subchapter is consistent with Executive Order No. 34 (1976), which requires that all departments that engage in State contracting develop and maintain rules and regulations governing causes, conditions, and procedures applicable to determinations of debarment, suspension, and disqualification by the department or agency. The standards set forth in the rules proposed for adoption are necessary for the NJMC to maintain minimum standards of competition and performance for its contractors. Accordingly, the NJMC has not established different requirements or exemptions for small businesses, because no business, regardless of its size, should be permitted to engage in contracting with the State if it has acted in an unethical or dishonest manner.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend, or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). Although the provisions of the State Plan do not apply to the NJMC (pursuant to N.J.S.A. 52:18A-206), the NJMC Master Plan sets forth smart growth principles to guide growth within the Meadowlands District consistent with State policy. The NJMC rules serve as the implementation tool of this policy.

The rules proposed for adoption at N.J.A.C. 19:3-7 do not relate to the State's land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the NJMC does not expect this rulemaking to have an impact on the State's achievement of smart growth or implementation of the State Plan.

Full text of the proposed new rules follows:

SUBCHAPTER 7 DEBARMENT, SUSPENSION AND DISQUALIFICATION FROM CONTRACTING

19:3-7.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Affiliates” means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

“Commission” means New Jersey Meadowlands Commission.

“Debarment” means an exclusion from contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.

“Contracting” means any arrangement giving rise to an obligation to supply any thing or perform any service, other than by virtue of State employment, or to supply any thing to or perform any service for a private person where the Commission provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

“Disqualification” means a debarment or a suspension that denies or revokes a qualification to bid or otherwise engage in Commission contracting that has been granted or applied for pursuant to statute, or rules.

“Person” means any natural person, company, firm association, corporation, or other entity.

“State” means the State of New Jersey, or any of the departments or agencies in the executive branch of government with the lawful authority to engage in contracting.

“Suspension” means an exclusion from contracting for a temporary period of time, pending the completion of an investigation of legal proceedings.

19:3-7.2 Causes for debarment

(a) The Commission shall debar a person from contracting with the Commission for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;
2. Violation of the Federal Organized Crime Control Act of 1970 ([Pub.L. 91-452](#)), or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;
3. Violation of Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b and c);
4. Violation of any of the laws governing the conduct of elections of the State of New Jersey or of its political subdivisions;
5. Violation of the Law Against Discrimination (P.L. 1945, c.169, N.J.S.A.10:5-1 et seq., as supplemented by P.L. 1975, c. 127), or of the act banning discrimination by industries engaged in defense work in the employment of persons therein (P.L. 1942, c. 114, N.J.S.A. 10:1-10 et seq.);
6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;
7. Violations of any laws governing the conduct of occupations or professions or regulated industries;
8. Improper attempt(s) to influence the outcome of the contracting process through contact with staff or a Commissioner;
9. Willful failure to perform in accordance with contract specifications or within contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;
11. Violation of contractual or statutory provisions regulating contingent fees;
12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the Commission to warrant debarment, including such conduct as may be prescribed by the laws or contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts; or
13. Debarment by some other department or agency in the executive branch.

19:3-7.3 Conditions for debarment

- (a) Debarment from contracting shall be made only by the Commission, except as otherwise provided by law.
- (b) The existence of any of the causes set forth in N.J.A.C. 19:3-7.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Commission unless otherwise required by law, and shall be rendered in the best interest of the State.
- (c) All mitigating factors shall be considered in determining the seriousness of the offense and failure or inadequacy of performance and in deciding whether debarment is warranted.
- (d) The existence of a cause set forth in N.J.A.C. 19:3-7.2(a)1 through 19:3-7.7 shall be established upon the rendering of a final judgment or conviction by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

- (e) The existence of a cause set forth in N.J.A.C. 19:3-7.2(a)8 through 12 shall be established by evidence which the Commission determines to be clear and convincing in nature.
- (f) Debarment for the cause set forth in N.J.A.C. 19:3-7.2(a)13 shall be proper provided that one of the remaining causes set forth in N.J.A.C. 19:3-7.2 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

19:3-7.4 Procedures, period and scope of debarment

- (a) When the Commission seeks to debar a person or his affiliates, the person or persons shall be furnished with a written notice stating the following:
 - 1. Debarment is being considered;
 - 2. The reasons for the proposed debarment; and
 - 3. An opportunity will be afforded to such person or persons for a hearing if the hearing is requested within seven days from the date of personal delivery or the date of mailing of such notice. Such request shall be filed with the Commission at the following address:

Department of Legal Affairs
New Jersey Meadowlands Commission
1 DeKorte Park Plaza
Lyndhurst, NJ 07071

- (b) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 54:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Where any State department or agency has already imposed debarment upon a party, the Commission may also impose a similar debarment without affording an opportunity for a hearing, provided the Commission furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information on his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

- (c) Debarment shall be for a reasonable, definitely stated period of time, which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in his behalf to explain why the additional period of debarment should not be imposed.
- (d) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced at the discretion of the Commission, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as, newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed.
- (e) A debarment may include all known affiliates of a person provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure, or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

19:3-7.5 Suspension and causes therefore

The Commission may suspend a person from State contracting for any cause specified in N.J.A.C. 19:3-7.2 or upon a reasonable suspicion that such cause exists.

19:3-7.6 Conditions for suspension

- (a) Suspension from State contracting shall be made only by the Commission with the approval of the Attorney General, except as otherwise provided by law.
- (b) The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Commission with the approval of the Attorney General, if in the best interest of the State.

- (c) Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.
- (d) In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence that is available, to the existence or absence of corroboration as to important allegations, and to inferences that may properly be drawn from the existence or absence of affirmative facts.
- (e) Reasonable suspicion of the existence of a cause described in N.J.A.C. 19:3-7.2(a)1 through 19:3-7.7 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.
- (f) A suspension invoked by another department or agency in the executive branch for any of the causes described in N.J.A.C. 19:3-7.2 may be the basis for the imposition of a concurrent suspension by the Commission without the necessity of an approval therefore by the Attorney General.

19:3-7.7 Procedures, period and scope of suspension

- (a) When the Commission suspends a person or his affiliates from contracting, the person or persons suspended shall be furnished with a written notice within 10 days after the effective date of the suspension stating the following:
 - 1. A suspension has been imposed and its effective date;
 - 2. The reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed;
 - 3. Where a suspension by another department or agency in the executive branch has been the basis for suspension by the Commission, that fact as a reason for the suspension shall be specified.
 - 4. The suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

5. If legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth the position of the Commission regarding the continuation of the suspension.
- (b) A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.
- (c) A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure, or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.
- (d) A request for a hearing under (a) above shall be filed with the Commission at the following address:

Department of Legal Affairs
New Jersey Meadowlands Commission
1 DeKorte Park Plaza
Lyndhurst, NJ 07071

19:3-7.8 Applicability

The rules contained herein governing debarment or suspension shall be applicable to existing practices and procedures of the Commission that concern prequalification for State contracting to the extent that such practices and procedures may concern the disqualification of any person from State contracting.

19:3-7.9 Exclusions

Any exclusion from contracting under these rules by virtue of debarment, suspension, or disqualification shall extend to all State contracting and

subcontracting within the control or jurisdiction of the Commission; provided, however, if the Commission determines that it is essential to the public interest and files a finding thereof with the Attorney General, the Commission may grant an exception from total exclusion with respect to a particular contract.

19:3-7.10 Notice

Prior notice shall be given by the Commission to the Attorney General and the State Treasurer of any proposed debarment or suspension under these rules.

19:3-7.11 Lists

The Commission shall provide the State Treasurer with the names of all persons suspended or debarred and the effective date and term thereof, if any.

19:3-7.12 Discretion

Nothing required by these rules shall be construed to limit the authority of the Commission to refrain from contracting within the discretion allowed by law.